

SECTION VII

CONTRACTING PROVISIONS

7.1 The DOD (acting through the Department of the Army) will be responsible for Contracting for this Project in accordance with US Contracting laws, regulations and procedures. The Contracting Officer is the exclusive source for providing contractual direction and instructions to the Contractors.

7.2 The PM will be responsible for the coordination of activities relating to the Project, and will support the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PM will review statements of work prior to the development of solicitations to ensure that they are in accordance with this MOU. In addition, the Contracting Officer will keep the PM advised of all financial arrangements with the prime Contractor(s).

7.3 The Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section X (Disclosure and Use of Project Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU, including Section X (Disclosure and Use of Project Information), Section XI (Controlled Unclassified Information), Section XIII (Security), and Section XIV (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer will advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.

7.4 In the event the Contracting Officer is unable to secure the rights to use and disclose Project Information required by Section X (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter will be referred to the PEO and its UK counterpart for resolution.

7.5 The Contracting Officer will immediately advise the PM of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

SECTION VIII

WORK SHARING

8.1 The Participants will strive toward the goal that the work to be performed under this MOU will be awarded based on the concept of "Best Value".

8.2 The industries of each Participant will be given equal opportunity to compete for, and equal chance of being given, work for which they have the capability.

8.3 No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

SECTION IX

PROJECT EQUIPMENT

9.1 Each Participant may provide Project Equipment identified as being necessary for executing the MOU to the other Participant. The Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another will be developed and maintained by the PM.

9.2 The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition and return the items in as good condition as received, normal wear and tear excepted. The receiving Participant will pay the cost of damage (other than normal wear and tear) to or loss of Project Equipment. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Project Equipment is lost, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures.

9.3 The receiving Participant will use all Project Equipment that is transferred only for the purposes of the Common Missile Project (unless otherwise agreed to in writing by the providing Participant). In addition, in accordance with Section XIV (Third Party Sales and Transfers), Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

9.4 Project Equipment transferred to the other Participant under this MOU will be returned to the providing Participant upon termination or expiration of this MOU, when the need for such equipment no longer exists, or when the providing Participant has requested the return of the equipment.

9.5 Transportation costs associated with the transfer of the equipment will be borne by the Participant that requests the Project Equipment.

9.6 Any Project Equipment, which is jointly acquired on behalf of both Participants for use under this MOU, will be disposed of during the Project or when the Project ceases, as decided by the PEO in consultation with its UK counterpart.

9.8 Disposal of jointly acquired Project Equipment may include a transfer of the interest of one Participant in such Project Equipment to the other Participant, or the sale of such equipment to a Third Party in accordance with Section XIV (Third Party Sales and Transfers) of this MOU. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this MOU.

SECTION X

DISCLOSURE AND USE OF PROJECT INFORMATION

10.1 Both Participants recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Participants intend to acquire sufficient Project Information and rights to use such information to enable the development, production, deployment, maintenance, and support of the Common Missile System. The nature and amount of Project Information to be acquired will be consistent with the objectives stated in Section III (Objectives), Section IV (Scope of Work), and the operational requirements set forth in Annex A (System Requirements). The limits on disclosure and use defined below apply initially to the C/TD phase only. They will be reviewed and may be amended before commencement of any subsequent phases.

10.2 Government Project Foreground Information.

10.2.1 Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to both Participants.

10.2.2 Use: Each Participant may use, and have used on its behalf, all Government Project Foreground Information without charge for Common Missile Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. If a Participant intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party; however, the provisions of Section XIV (Third Party Sales and Transfers) of this MOU will also apply.

10.3 Government Project Background Information.

10.3.1 Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Government Project Background Information generated by its military or civilian employees outside the scope of this MOU, provided that:

10.3.1.1 Such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

10.3.1.2 Such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

10.3.1.3 Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

10.3.2 Use: Government Project Background Information disclosed by one Participant to the other may be used without charge by, or on behalf of the receiving Participant for Project Purposes only; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

10.4 Contractor Project Foreground Information.

10.4.1 Disclosure: Project Foreground Information generated by Contractors, will be disclosed without charge to both Participants.

10.4.2 Use: Each Participant may use, or have used on its behalf, without charge for Common Missile Purposes, all Contractor Project Foreground Information generated by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). If a Participant intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Section XIV (Third Party Sales and Transfers) of the MOU will also apply. The Participants will consider acquiring the legal rights to use Contractor Project Foreground Information in a sale.

10.5 Contractor Project Background Information.

10.5.1 Disclosure: A Participant will make available to the other Participant promptly and without charge all Project Background Information generated by Contractors which is delivered under Contracts awarded in accordance with this MOU. Any other Project Background Information which is generated by Contractors under Contracts awarded outside of this MOU and which is in the possession of one Participant will be made available promptly and without charge to another Participant upon its request, provided that the following conditions are met:

10.5.1.1 Such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

10.5.1.2 Such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

10.5.1.3 Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

10.5.2 Use: Project Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by, or on behalf of the other Participant for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant and Contractor will retain all its rights with respect to such Project Background Information.

10.6 Alternative Uses of Project Information

10.6.1 The prior written consent of each Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this MOU.

10.6.2 Any Project Background Information provided by one Participant will be used by the receiving Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant.

10.7 Proprietary Project Information.

10.7.1 All Project Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information as specified in Section XI (Controlled Unclassified Information).

10.7.2 The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this MOU.

10.8 Patents

10.8.1 Where a Participant owns title to a Project Invention, or has the right to receive title to a Project Invention, that Participant will consult with the other Participant regarding the filing of a Patent application for such Project Invention. The Participant which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Participant with the opportunity to file on behalf of the Participant holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Participant having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution.

10.8.2 The other Participant will be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.

10.8.3 The other Participant will be granted a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Participant, throughout the world for Defense Purposes, any Project Invention.

10.8.4 Patent applications which contain Classified Information, to be filed under this MOU, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

10.8.5 Each Participant will notify the other Participant of any Patent infringement claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Participant will provide information available to it that may assist in defending the claim. Each Participant will be responsible for handling all Patent infringement claims made in its territory, and will consult with the other Participant during the handling, and prior to any settlement, of such claims. The Participants will share in the costs of resolving Patent infringement claims in the same percentage as they share the agreed Financial and Non Financial

Costs of the current phase. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.

10.8.6 Each Participant will include in all its Contracts a provision governing the disposition of rights in regard to Project Inventions and patent rights relating thereto, which either;

10.8.6.1 Provides that the Participants will hold title to all Project Inventions together with the right to make Patent application for the same, free of encumbrances from the Contractor, or

10.8.6.2 Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make Patent applications for the same, while securing for the Participants a license for the Project Inventions, and any patents therefore, on terms in compliance with the provisions of paragraph 10.8.7.

10.8.7 In the event that a Contractor holds the title (or elects to retain title) for a Project Invention, the contracting Participant will secure for both Participants non-exclusive, irrevocable, royalty-free licenses under all Patents secured for the inventions, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.

SECTION XI

CONTROLLED UNCLASSIFIED INFORMATION

11.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

11.1.1 Such information will be used only for the purposes authorized for use of Project Information as specified in Section X (Disclosure and Use of Project Information).

11.1.2 Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 11.1.1 and will be subject to the provisions of Section XIV (Third Party Sales and Transfers).

11.1.3 Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 11.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provisions, immediate notification will be given to the originating Participant.

11.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Project Security Instructions.

11.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 11.1.

11.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

SECTION XII

VISITS TO ESTABLISHMENTS

12.1 Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and need-to-know.

12.2 All visiting personnel will be required to comply with security regulations of the host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

12.3 Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform with the established visit procedures of the host country. Requests for visits will bear the name of the Project.

12.4 Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with Recurring International Visit Procedures.

SECTION XIII

SECURITY

13.1 All Classified Information or material provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the 1961 General Security Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America as amended and including the Industrial Security Annex thereto.

13.2 Classified Information and material will be transferred only through official government-to-government channels or through channels approved by the DSAs of the Participants. Such information and material will bear the level of classification; and denote the country of origin, the conditions of release, and the fact that the information relates to this MOU.

13.3 Each Participant will take all lawful steps available to it to ensure that information provided or generated pursuant to this MOU is protected from further disclosure, except as permitted by paragraph 13.8, unless the originating Participant consents to such disclosure. Accordingly, each Participant will ensure that:

13.3.1 The recipient will not release the Classified Information to any government, national, organization, or any other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures detailed in Section XIV (Third Party Sales and Transfers).

13.3.2 The recipient will not use the Classified Information for other than the purposes provided for in this MOU.

13.3.3 The recipient will comply with any distribution and access restrictions on information that is provided under this MOU.

13.4 The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participant of the details of any such occurrences, of the final results of the investigation, and of the corrective action taken to preclude recurrences.

13.5 The PM will prepare a Project Security Instruction and a Security Classification Guide for the Project. The Project Security Instructions and Security Classification Guide will describe the methods by which Project Information and material will be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide will be developed by the PM within three months after this MOU enters into effect. They will be reviewed and forwarded to the appropriate DSA and will be applicable to all government and Contractor personnel participating in the Project. The Classification Guide will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instructions and the Classification Guide will be approved by the appropriate DSA

prior to the transfer of any Classified Information or Controlled Unclassified Information.

13.6 Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy, or management control of nations or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

13.7 For any facility wherein Classified Information or material is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this MOU. These officials will be responsible for limiting access to Classified Information or material involved in this MOU to those persons who have been properly approved for access and have a need-to-know.

13.8 Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the Project.

13.9 Information or material provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is Unclassified and the contents are Unclassified.

SECTION XIV

THIRD PARTY SALES AND TRANSFERS

14.1 The DOD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced wholly or in part from Project Foreground Information to any Third Party without prior consultation with the MOD. Furthermore, the DOD will not permit any such sale, disclosure, or transfer by others, including the owner, without the prior written consultation with the MOD. The DOD recognizes the importance to the MOD of decisions taken by the DOD on such potential sales, disclosures, and transfers, which take into account the views on security matters held by the MOD. The DOD recognizes that sales, disclosures, or other transfers, described in this paragraph will only be made if the government of the intending recipient consents in writing that it will:

14.1.1 Not transfer, or permit the further retransfer of, any Project Equipment or Project Foreground Information provided.

14.1.2 Use, or permit the use of, the Project Equipment or Project Foreground Information provided only for the purposed for which such Project Equipment or Project Foreground Information is furnished.

14.2 The MOD will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Project Foreground Information to any Third Party without the prior written consent of the DOD. Furthermore, the MOD will not permit any such sale, disclosure, or transfer by others, including the owner, without the prior written consent of the DOD. The MOD recognizes that such sales, disclosures, or other transfers will not be authorized by the US Government unless the government of the intended recipient consents in writing with the US that it will:

14.2.1 Not transfer, or permit the further retransfer of, any Project Equipment or Project Foreground Information provided; and

14.2.2 Use, or permit the use of, the Project Equipment or Project Foreground Information provided only for the purposes specified by the Participants.

14.3 A Participant will not sell, transfer title to, disclose, or transfer possession of Project Background Information or Project Equipment provided by the other Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the methods and provisions for implementing such transfers.

14.4 Consent for Third Party sales and transfers of Project Foreground Information or jointly acquired Project Equipment will not be withheld except for reasons of foreign policy, national security, or national laws. The DOD will not refuse approval of a sale

or transfer to a Third Party when it would be willing to sell or transfer such equipment or information to the same Third Party.

14.5 Sales and other transfers of equipment developed or Project Foreground Information generated under this MOU may attract a levy to be shared between the Participants. Prior to any such sale or transfer, the Participants, consistent with the laws and regulations of each Participant, will mutually determine the amounts of any levy and the procedures for assessing and distributing such levy. Either Participant may reduce the assessment of its share of the levy.

14.6 Specific details of maximum levy rates will be specified in the Contracts for each phase of the Project.

SECTION XV

LIABILITY AND CLAIMS

15.1 Claims arising under this MOU will be dealt with under paragraph 1 of Agreement Concerning Defense Cooperation Arrangements of 27 May 1993 Government between the United States of America and the Government of Great Britain and Northern Ireland. The cost sharing arrangements in accordance with that paragraph will be in proportion to the financial contributions made by the Participants under this MOU.

SECTION XVI

PARTICIPATION OF ADDITIONAL NATIONS

16.1 It is recognized that other national defense organizations may wish to join the Project.

16.2 Mutual consent of the Participants will be required to conduct discussions with potential additional Participants. The Participants will discuss the arrangements under which another Participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section X (Disclosure and Use of Project Information), Section XI (Controlled Unclassified Information), and Section XIV (Third Party Sales and Transfers).

16.3 The PEO and its UK counterpart will jointly formulate the provisions under which additional Participants may join, having regard to advice provided by the PM. The addition of new Participants to the Project will require amendment to this MOU by the Participants.